

CHAPTER 3 — PARTICIPATING EMPLOYEES

300	Eligibility for Participation in WRS
301	Employee or Independent Contractor
302	Employees Not Eligible for WRS on Date of Hire
303	Rehired Employees
304	Continuation of Participation
305	Employees Not Eligible for Participation
306	Examples of Employment Situations and Eligibility for Participation
307	Employment Category Descriptions
308	Examples of Employment in Multiple Categories
309	WRS Eligibility and/or Employment Category Appeals
310	Statute of Limitations for Corrections to Service, Earnings and Contributions that Impact WRS Disability and Retirement Benefit Payments
311	Maintaining Records Longer than Seven Years

300 Eligibility for Participation in WRS

Employers are responsible for evaluating and determining each employee's eligibility for WRS participation. It is the intent of the statutes that all employees participate in WRS, unless your employee is excluded as defined in Wis. Stat. § 40.22. Anyone who receives earnings for personal services rendered must be evaluated for WRS eligibility.

Note: Employers must evaluate all employees including individuals who are hired as seasonal, project, temporary and/or part-time employees, members of all boards and commissions, and elected officials. Employees can appeal their employer's determination regarding WRS eligibility. Upon such an appeal the employer will be required to justify their determination of such eligibility. See Chapter 309 for further details.

All employees who meet BOTH of the following criteria as listed in Wis. Stat. § 40.22 must be enrolled in the WRS:



1. Employee is expected to work one-third of full-time per year (600 hours for non-teaching employees and 440 hours for teachers).

AND

2. Employee is expected to be employed for at least one year (365 consecutive days, 366 in leap year) from date of hire.

Note: If an employee is expected to work nine or ten months per year but is expected to return year after year, the one-year requirement is met.

Important considerations in determining WRS eligibility:

- Employees who meet the eligibility criteria must be enrolled in WRS. (The employee has no choice unless the employee is a WRS annuitant upon hire. See Chapter 15.)
- Employees who do not meet the criteria may **not** be enrolled in WRS.
- The employer must assess the reasonable number of hours necessary to perform the duties. (Circuit Court Case No. 96CV002586)

EXAMPLE 1: A part-time teacher, expected to return year after year, is hired at a community college to teach one class per week. The college compensates the teacher for the number of hours it takes to teach the class. The employer must determine whether the teacher is expected to work 440 hours for one year to qualify for WRS when hired.

The employer must calculate the number of hours based on the reasonable number of hours the teacher is expected to work rather than the actual number of hours for which the teacher receives compensation.

EXAMPLE 2: A part-time bus driver is hired by a school district to drive a morning and an afternoon route. The employer estimates each route will take one and one-half hours to complete for a total of three hours each day.

The driver is also required to inspect, clean, fuel, etc. the bus each morning and each afternoon. The employer estimates this will take 15 minutes in the morning and 15 minutes in the afternoon for a total of 30 minutes each day. There are 180 days in the school year. $180 \text{ days} \times 3.5 \text{ hours/day} = 630 \text{ hours per school year}$. The bus driver meets the 600 hours for one-year expectation to qualify for WRS when hired.

EXAMPLE 3: A librarian in a permanent position works 900 hours per year for a joint library district created by six towns and villages. At least one of the employers of the joint library district is a WRS participating employer.

For purposes of determining eligibility in the WRS, the employee's hours of service for the joint instrumentality is to be considered as a whole, without regard to the number of separate units of government which created the joint instrumentality. Therefore, the librarian is eligible for participation in the WRS due to the total number of hours to be worked.

NOTE: Although all hours are considered for eligibility purposes, this is not the case for determining the hours and earnings actually reported to the WRS. See Subchapters 406 M. and 407 for details on reporting hours of service and earnings for an eligible employee working for a joint instrumentality.

- All employment for which an employee receives earnings for personal services rendered at one employer must be included to determine WRS eligibility.
- Employment for which an amount is paid to the employee by the employer—regardless of the source of funding (e.g., grants, class reduction grants) and regardless of whether reimbursement for earnings is made by a second employing entity—must be included in the evaluation of WRS eligibility.
- The eligibility criteria must be met at each state agency or local government employer independently.

NOTE: See Example 3 above for employees of Joint Instrumentality.

- WRS participation may not be limited to a particular department, a classification of employees, special interest groups or union contract groups nor may it be limited to only full-time employees.
- If eligibility criteria for WRS purposes are met upon hire, the employee must be enrolled as of the hire date.
- Employees who do not meet the WRS eligibility criteria upon hire may become eligible later as detailed in Subchapter 302.

301 Employee or Independent Contractor

An independent contractor is not an employee of the employer and is not eligible for participation in WRS.

Employers must determine whether an individual is an employee or an independent contractor. The following information is taken from IRS Publication 15A, *Employer's Supplemental Tax Guide*, updated January 28, 2000, and can be used as an aid in making this determination.

- To determine whether the individual is an employee or an independent contractor under the common law, the relationship of the worker and the business must be examined
- Evidence of control and independence must be considered. They fall into three categories: behavioral control, financial control and type of relationship between parties.

A. **Behavioral Control.** Factors indicating whether the business has a right to direct and control how the worker performs the task for which the worker is hired include the type and degree of:

- Instructions the business gives the worker. An employee is generally subject to the business' instructions about when, where and how to work. All of the following are examples of types of instructions about performing the work:
 - When and where to do the work.
 - What tools or equipment to use.
 - What workers to hire or to assist with the work.

- Where to purchase supplies and services.
- What work a specified individual must perform.
- What order or sequence to follow.
- Training the business provides for the worker. An employee may be trained to perform services in a particular manner. Independent contractors ordinarily use their own methods.

B. Financial Control. Factors indicating whether the business has a right to control the business aspects of the worker's job include:

- The extent to which the worker has not been reimbursed for business expenses. Independent contractors are more likely to have expenses that have not been reimbursed. Fixed ongoing costs that are incurred regardless of whether work is currently being performed are especially important. However, employees may also incur expenses that are not reimbursed in connection with the services they perform for their business.
- The extent of the worker's investment. An independent contractor often has a significant investment in the facilities they use in performing services for someone else. However, a significant investment is not necessary for independent contractor status.
- The extent to which the worker makes services available to the relevant market. An independent contractor is generally free to seek out business opportunities. Independent contractors often advertise, maintain a visible business location, and are available to work in the relevant market.
- How the business pays the worker. An employee is generally paid a regular wage amount for an hourly, weekly, or other time-period. This usually indicates that a worker is an employee, even when commission supplements the wage or salary. An independent contractor is usually paid a flat fee for the job. However, it is common in some professions, such as law, to pay independent contractors hourly.
- The extent to which the worker can realize a profit or incur a loss. An independent contractor can incur a profit or loss.

C. Type of Relationship. Factors indicating the type of relationship include:

- Written contracts describing the relationship the parties intended to create.
- Whether the business provides the worker with employee-type benefits such as insurance, a pension plan, vacation, or sick pay.
- The permanency of the relationship. If you engage a worker with the expectation that the relationship will continue indefinitely, rather than for a specific project or period, it is generally considered evidence that your intent was to create an employer-employee relationship.

- The extent to which services performed by the worker is a key aspect of the regular business of the company. If a worker provides services that are a key aspect of your regular business activity, it is more likely that you will have the right to direct and control their activities. For example, when a law firm hires an attorney, it is likely that it will present the attorney's work as its own and would have the right to control or direct that work. This situation indicates an employer-employee relationship.

If you want the IRS to determine whether a worker is an employee, file Form SS-8, *Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax Withholding* with the IRS.

302 Employees Not Eligible for WRS on Date of Hire

An employee who does not meet eligibility requirements for WRS participation on the date of hire may become eligible and must be enrolled any time:

- A. **Expectations Change.** If the employer's expectation of either hours to be worked or duration of employment change after an employee is hired, the employee must be enrolled as soon as the employee is expected to meet the eligibility requirements in Subchapter 300.

EXAMPLE A: On March 2, 2004 an employee was hired as a full-time clerical assistant. At the time of hire only two months of employment (approximately 320 hours) were expected. Effective April 6, employment changes to a half-time (1,040 hours per year) permanent position. The clerical employee should be enrolled in WRS with a begin date of April 6, 2004, the date they were expected to work at least one year and for at least 600 hours per year.

EXAMPLE B: A Limited Term Employee (LTE) is hired on March 1, 2004 to work 1,043 hours for an expected duration of six months through August 31, 2004. On August 15, 2004 the LTE is offered and accepts another six-month appointment to begin on September 1, 2004 and end February 28, 2005.

On August 15, 2004, the employer's expectation that the employee would be employed for less than a year changes to an expectation that the employee would be employed for at least one year. The employee becomes eligible to participate in WRS on August 15, 2004.

EXAMPLE C: An employee is hired to teach full-time for one semester from January 4, 2004 to June 3, 2004. On March 14, 2004 the employee is offered and accepts a contract to teach full-time for the following school year beginning September 9, 2004 and ending June 2, 2005.

On March 14, 2004, the employer's expectation that the employee would be employed for less than a year changes to an expectation that the employee would be employed for at least one year. The employee becomes eligible to participate in WRS on March 14, 2004.

- B. **Evaluation on the One-Year Anniversary Date of Employment.** If the employer has determined on the date of hire that a person will be employed for less than one year OR will work less than one-third of full-time, the employer does not provide WRS coverage for the employee at that time. If, however, one year after the initial date of employment, the employee has worked over 440 hours (teacher) or 600 hours (non-teacher), they must be enrolled on the one-year anniversary date (not retroactively to the hire date), since both WRS eligibility criteria were met on that date.

EXAMPLE: A non-teaching employee begins work on March 13, 2003. It is determined then that they will be employed for at least one year, but they are not expected to be employed for at least 600 hours. Thus, they are not enrolled in WRS upon hire. One year later, March 13, 2004, the employer reviews the actual hours worked from March 13, 2003 to March 12, 2004 and determines the employee actually worked 625 hours. The employer must enroll the employee in WRS effective March 13, 2004, the date both WRS eligibility criteria were met.

- C. **Evaluation on a 12-month Rolling Look-Back.** Employees who work the required hours in any 12 consecutive months must be enrolled. If on the employee's one-year anniversary date, they have not worked the required number of hours for WRS participation, continuous monitoring on a rolling 12-month basis must begin. The employee must be enrolled in the WRS on the day after they have worked over 440 hours (teacher) or 600 hours (non-teachers) in any immediately preceding 12-month period.

EXAMPLE 1: A non-teaching employee begins work on March 10, 2003. It is determined then that they will be employed for at least one year but will not be employed for at least 600 hours. Thus, the employee is not enrolled in WRS upon hire. One year later, the employee is still employed. On March 10, 2004, the employer reviews the actual hours worked from March 10, 2003 to March 9, 2004 and determines the employee did not work at least 600 hours. The employee is not enrolled in the WRS at this time.

However, the employer now must continue to evaluate the employee's eligibility on a "**12-month rolling period.**" The employer has a biweekly payroll. As each future payroll is processed, the employer must add the hours from the most recent payroll period and subtract the hours from the oldest payroll period to determine the total hours worked in the immediately preceding 12 months.

In this case, the employee reached 600 hours for one year threshold in the April 10-23, 2004 payroll cycle. Therefore, the employer must determine the actual day on which the employee reached 600 hours and enroll the employee in the WRS effective the next day.

Table 3.1 - Rolling Look-Back (How to Monitor Employee Hours)

Pay Period		One Year Review		Hours Worked - One Year Review
From:	Through:	From:	Through:	
3/10/2004	3/23/2004	3/24/2003	3/23/2004	540
3/24/2004	4/06/2004	4/07/2003	4/06/2004	530
4/07/2004	4/20/2004	4/21/2003	4/20/2004	580
4/21/2004	5/04/2004	5/05/2003	5/04/2004	600

NOTE: In these situations you may not use the first day of the next pay period as the WRS effective date unless the employee reaches 600 hours on the last day of the pay period.

EXAMPLE 2: A non-teaching employee is hired part-time seasonal to work 260 hours from June 1, 2004 to August 29, 2004 on the City's street crew. Upon hire, the employee is not expected to meet the 600-hour and one-year requirement to qualify for WRS participation.

On October 1, 2004, the employee is rehired by the City to do snow removal for a maximum of 200 hours. This second position with the City also does not meet the 600-hour and one-year requirement to qualify for WRS. However, the employer is required to look back to determine if the employee has worked 600 hours in the immediately preceding 12-month period. In this case the employee has not worked 600 hours in the preceding 12-month period and does not qualify for WRS participation.

On June 1, 2005, (the employee's anniversary date of hire) the employee is again rehired to work on the City's street crew as part-time seasonal for 260 hours until August 28, 2005. This appointment does not meet the 600 hours for one year criteria to qualify for WRS participation. Again the employer uses the one-year look-back provision and determines the employee has worked 460 hours in the immediately preceding 12-month period. Therefore, the employee still does not qualify for WRS participation.

For each subsequent pay period, the employer must continue to assess the number of hours worked in the immediately preceding 12-month period (subtract the oldest pay period hours and add the most recent pay period hours). Refer to 302C Example 1 for instructions.

- D. Duration of Employment Exceeds 30 Calendar Days.** A limited term employee is hired and does not meet the 600-hour and one-year requirement to qualify for WRS participation. One year later the employer determines the employee actually worked 600 or more hours during the preceding 12-month period. The employee is enrolled in WRS on the one-year anniversary date.

The employee terminates employment less than 30 calendar days after becoming WRS eligible. In this situation, the employee continues to be covered under WRS even though the period of WRS coverage is less than 30 calendar days because the duration of employment has been for more than 30 calendar days.

EXAMPLE: A school hired an LTE on September 6, 2002 to work for six months entering data into a computer system. The employee was not eligible for WRS upon hire. Using the look-back method, one year later, on September 5, 2003, the employer determined that the employee had actually worked over 600 hours during the previous 12-month period. The employee became eligible for WRS starting on their one-year anniversary date of hire, September 6, 2003. The employee worked two weeks and terminated employment with the school on September 20, 2003, less than 30 days after becoming eligible for WRS.

The employee's service and earnings from September 6, 2003 through September 20, 2003 are WRS reportable because their duration of employment was greater than 30 calendar days, even though their participation under WRS was less than 30 calendar days.

303 Rehired Employees

Consider the following when rehiring an employee:

A. The employee was previously covered under WRS and returned to work in one of the following situations:

- Employee is rehired within 12 months of termination. The employee has not received a WRS benefit. You must reenroll the employee in the WRS immediately upon rehire regardless of whether or not the new position qualifies for WRS and even if the new position is expected to last for less than 30 calendar days.
- Employee applied for and received a separation benefit and is rehired prior to fulfilling the minimum break in service requirement (see Subchapter 1401, Eligibility for Benefits – Minimum Break in Service). Because the employee did not complete the minimum break in service, the employee is not entitled to receive the benefit and must be reported to WRS immediately upon rehire. Also, the employee will be required to repay the separation benefit.
- Employee applied for and received a separation benefit and rehires after fulfilling the minimum break in service requirement (see Subchapter 1401, Eligibility for Benefits – Minimum Break in Service). Because the employee completed the minimum break in service, the employee is entitled to receive the benefit. You must treat the employee for WRS eligibility purposes as a new hire and determine if the employee is eligible for WRS. Refer to Subchapter 300.
- Teacher is rehired into a non-teaching position within 12 months of termination and has not received a WRS benefit. The school district covers non-teachers under WRS. The employee is immediately eligible for WRS upon hire although expected to work 200 hours for less than one year and, because the employee does not meet the

definition of a teacher, the employee is enrolled in employment category 12, Educational Support Personnel. Note: If non-teachers were not covered under WRS by the school district, the employee would not be eligible to participate in WRS.

B. The employee was not covered under WRS and returned to work in one of the following situations:

- Employee is rehired within 12 months of termination. You do not expect the new position to meet the 1/3 full-time for one-year expectation to qualify for WRS. However, if the employee has worked 440 hours as a teacher or 600 hours as a non-teacher within the immediately preceding 12-month period, you must report the employee for WRS on the rehire date because now the employee meets the 1/3 full time for one year expectation.
- Employee is rehired and you expect the new position to meet the 1/3 full-time for one year expectation to qualify for WRS. You must report the employee for WRS on the rehire date.
- Employee is rehired and you do not expect the new position to meet the 1/3 full-time for one year expectation to qualify for WRS. However, if the employee qualifies to participate in WRS at some time in the future and quits employment after being covered under the WRS for less than 30 calendar days, the employee is still eligible to participate in WRS because he has been “employed” for more than 30 calendar days.

C. The employee was previously covered under WRS, terminated employment, applied for and received a retirement annuity and returned to work as a rehired annuitant. Refer to Chapter 15 for reporting instructions. Also see Subchapter 1401, for details on the minimum break in service requirements.

- Employee meets the minimum break in service requirement. Upon rehire, you do not expect the new position to meet the 1/3 full-time for one-year expectation to qualify for WRS. The employee continues to receive the WRS annuity benefit and current earnings are not reported for WRS purposes.
- At some point in the future, your expectation changes and the annuitant meets the criteria for WRS eligibility. You must give the annuitant a *Rehired Annuitant Election* form (ET-2319) to elect or decline WRS participation. If the annuitant elects to participate in WRS, the annuity stops and WRS coverage becomes effective the first of the month following ETF's receipt of the election form. If the employee declines to participate in WRS, the WRS annuity continues, current earnings are not reported for WRS purposes, and the annuitant can elect to participate at a future date.
- Employee does not meet the minimum break in service requirement. If the return is with the same employer, the annuity is cancelled. You must reenroll the employee immediately upon rehire regardless of whether or not the new position qualifies for WRS and even if the new position is expected to last for less than 30 calendar days. If the return is with a different employer, the annuity is cancelled only if the new position qualifies for WRS.

304 Continuation of Participation

A WRS covered employee continues to be WRS eligible even if hours are subsequently reduced to less than 1/3 full-time.

If an employee covered under WRS terminates, does not apply for a WRS benefit and subsequently returns to work for the same employer **within** 12 consecutive months, he or she must be reenrolled in WRS without consideration as to the duration of the new period of employment (Wis. Stat. § 40.22 (3m) and (6)).

Once an employee becomes eligible for WRS, eligibility continues until:

- The employee-employer relationship has been terminated for 12 or more consecutive months.
- The employee terminates and receives a benefit under Wis. Stat. §§ 40.23 (retirement annuity), 40.25(1), (2) or (2m) (separation benefit or lump sum payment) or 40.63 (disability annuity).

305 Employees Not Eligible for Participation

Employees who do not meet the eligibility criteria as enumerated in Subchapters 300 & 302 are not eligible for participation in the WRS. In addition, the following individuals are not considered "participating employees":

- A. Police and firefighters who prior to January 1, 1948, contributed to a pension fund established under Wis. Stat. §§ 61.65 or 62.13(4), (9a) and (10), 1975. (When such persons are reemployed by the same police or fire department in which they previously served, they again become members of the local pension fund.)
- B. Persons employed under a contract involving the furnishing by the person of more than personal services.
- C. Persons engaged in an independently established trade, business or profession whose services are not compensated for on a payroll of that employer. See Subchapter 301 for guidelines to determine employee vs. independent contractor status.
- D. Persons employed for less than 30 calendar days. For exceptions, see Subchapters 302D and 303, Rehired Employees.
- E. Patients or inmates of a hospital, home or institution performing service therein.
- F. Welfare recipients who perform services in return for assistance payments. The primary intent of such work relief programs is to provide assistance to needy individuals and their families. Work is not compensated, but is a condition of receiving assistance.
- G. Students under age 20 who are regularly enrolled or expected to be enrolled as a full-time student in grades 1-12 in a public, private, or parochial elementary or high school and were hired on or after April 23, 1992. (Eligibility evaluation begins when the student obtains a high school or equivalency diploma, turns age 20 or supplies the employer with written notification of leaving school.)

- H. WRS annuitants who have not elected to return to active participation in the WRS.
- I. Employees appointed by a school or other education system (in which the individual is regularly enrolled as a student and attends classes) to perform services incidental to their course of study at that school or education system.
- J. Employees appointed by the University under Wis. Stat. § 36.19, or by the University of Wisconsin Hospitals and Clinics Authority, as student assistants or employees in training.

306 Examples of Employment Situations and Eligibility for Participation

Table 3.1 – WRS Eligibility Situations

EX.	Employment Characteristics	Eligible to Participate?	Reason
A	Non-teaching employee is hired to work 2,080 hrs. on a special project to last one year and there is no expectation of reassignment to another.	Yes	Expected duration of employment is one year and employed for at least one-third full-time (600 hours for non-teachers).
B	Non-teaching employee is hired permanently to work 1,040 hrs. per year and to perform several functions for one or more departments at the same employer.	Yes	All work for the same employer is considered in determining whether a person meets requirement of one-third of full-time employment for a 12-month period.
C	Employee newly hired to fill full-time permanent position, but terminates after two months.	Yes	Employee was expected to work at least one-third of full-time and for at least one year upon hire.
D	Employee newly hired to fill full-time position, but terminates before working 30 calendar days.	No	The employee is not eligible for retirement coverage for that period of service and any retirement contributions withheld from the employee's salary should be refunded. (Wis. Stat. § 40.22(6))* For exceptions, see Subchapters 302 and 303.
E	WRS active participant changes from working 1,500 hours to approximately 300 hours per year.	Yes	Participation continues until employee-employer relationship is terminated for 12 or more consecutive months or employee terminates and receives a separation, retirement or disability benefit.
F	Employee permanently hired to work unknown hours with a probability to be more than 600 hours per year.	Yes	Expected to work at least one-third of full-time and expected duration of employment is at least one year.
G	Employee hired late in year. Half-time position expected to be about 1,000 hours a year for two years.	Yes	Expected to work at least one-third of full-time and expected duration of employment is at least one year.
H	Upon employment, employee is not expected to work one-third of full-time per year; after employment, expectations change to at least one-third of full-time per year.	Yes, upon change of expectations	Report when the change occurs with the expectation of one-third full-time employment per year. (WRS enrollment is effective on the date expectations changed.)
I	Employee hired on "stand-by," "temporary," "LTE," "on-call," "seasonal," or "substitute teacher" basis. Employment is full-time, but for five months only.	No	Expected to work less than one year. (Refer to Subchapter 302.)

* This provision does not affect an employee's eligibility for insurance coverage during this period of time.

Wisconsin Retirement System
Chapter 3 — Participating Employees
Page 12

EX.	Employment Characteristics	Eligible to Participate?	Reason
J	Participating employee terminates employment, takes a WRS retirement annuity, meets the minimum break in service requirement and is rehired to work less than one-third full-time.	No	A participant to whom a retirement annuity is payable under § 40.23, and who is subsequently employed by any participating employer shall not be a participating employee until the employee qualifies as an eligible employee, and the employee elects to return to active WRS participation by filing the ET-2319 election form. (See Chapter 15.)
K	Participating employee terminates employment, takes a WRS retirement annuity, meets the minimum break in service requirement, is rehired to work in excess of one-third full-time for more than one year and elects to participate in WRS on the ET-2319.	Yes	A participant to whom a retirement annuity is payable under Wis. Stat. § 40.23, and who is subsequently employed by a participating employer shall be a participating employee if the employee qualifies as an eligible employee and the employee elects to return to active WRS participation by filing the ET-2319 election form. (See Chapter 15.)
L	Employee is expected to work one year and one-third time at Employer A and also works 150 hours per year at Employer B.	Yes, at Employer A; No at Employer B	Employees must meet the eligibility criteria at each employer independently to be reported by the employer.
M	Participating non-teaching employee terminates WRS-covered employment, does not take a WRS benefit and is rehired by the same employer within 12 consecutive months in a position not expected to exceed 600 hours in a year.	Yes, immediately upon hire	Regardless of expected hours of employment, a participating employee remains eligible unless terminated from employer 12 consecutive months or receives a benefit under §§ 40.23, 40.25 (1) (2) or (2m), or 40.63.
N	Seasonal employee who is not enrolled in WRS was hired May 1, 2000, works over 600 hours (440 hours if a teacher) before terminating in September. Employee is rehired on May 1, 2001.	Yes, immediately upon rehire	Employee completed 600 hours in the immediately preceding 12 month period (440 hours for a teacher). WRS begin date is May 1, 2001.
O	Non-teaching employee hired to work 500 hours for six months. After five months, you notice he has worked 600 hours.	No	Enroll employee if and when expectations change such that he is expected to work both for one year and 600 hours. Or, enroll on one-year anniversary if a look back indicates at least 600 hours had been worked during the previous 12-month period.
P	Substitute teacher is hired on September 10, 2000. Employment is sporadic. On September 20, 2001, she is subbing for the first time in the new school year. Upon evaluation, you discover that from September 21, 2000 to September 20, 2001, she has worked 445 hours.	Yes	As of September 20, 2001 she had worked for both one year and for at least 440 hours. Her WRS begin date is September 21, 1998, the day following working 440 hours.
Q	A school bus driver who previously had not worked 600 hours in any 12-month period takes on additional extracurricular driving for basketball season. She is now expected to work at least one year and at least 600 hours per year.	Yes	Her WRS begin date is the date that she takes on the additional hours. On this date, you are able to reasonably determine that the driver is expected to work for one year and for 600 hours.
R	Employer only covers teachers in WRS. Teacher participates in WRS while also employed as a substitute bus driver.	No	Earnings paid for driving the bus are not reportable for WRS since the employer does not cover non-teaching positions under WRS.

EX.	Employment Characteristics	Eligible to Participate?	Reason
S	Employee hired September 1 and expectation is that the employee will not be employed for 600 hours. On September 1 of the next year, the employee did work 600 hours and becomes eligible for WRS. The employee terminates on September 17.	Yes	Even though the employee's WRS coverage was for less than 30 calendar days, the employee's duration of employment exceeded 30 calendar days, therefore they are eligible.
T	Employee terminates from WRS eligible position and continues working "on-call" for the same employer.	Yes	Regardless of the expected hours or number of expected working days, a participating employee remains eligible unless terminated from all employment with the employer for 12 consecutive months or receives a benefit under Wis. Stat. §§ 40.23, 40.25 (1) (2) or (2m) or 40.63.
U	Participating teacher's aide reduces hours to less than 600 and continues to work for the school district.	Yes	WRS eligibility continues until the employee terminates from all employment with the employer for 12 consecutive months or receives a benefit under Wis. Stat. §§ 40.23, 40.25 (1) (2) or (2m) or 40.63.
V	Long-term substitute teacher is hired in a 9-month academic year appointment. At the end of the appointment the teacher signs a contract to teach the following year. Change in expectation occurs when the employee signs the new contract.	Yes, Upon change of expectations	Employee is not eligible when hired. Report when the change occurs with the expectation of 440 hours for a 12-month period, not retroactive to date of hire.

307 Employment Category Descriptions

Before a *Wisconsin Retirement System Enrollment* (ET-2316) is filed for a new employee, it is necessary to determine the appropriate employment category. Determination of the proper employment category for each eligible employee is essential because contribution rates and benefit payments vary for participants in different categories.

It is the employer's responsibility to determine the appropriate employment category. The employee can appeal your determination of WRS employment category. Use the criteria in **Table 3.2** to make the determination:

Table 3.2 – Employment Category Descriptions

Employment Code/Title		Description
00	General Employee	Includes all reserve judges, court reporters and employees not specifically designated under one of the other employment categories.
01	Court Reporter (used only by state agencies)	
02	State Executive Retirement Plan (used only by state agencies)	This applies only to state officers and employees serving in positions specified in Wis. Stat. § 19.42 (10) (L) or § 20.923 (4), (4m), (8) or (9) or authorized under § 230.08 (2) (e) during the time of employment.

Wisconsin Retirement System
Chapter 3 — Participating Employees
Page 14

Employment Code/Title	Description																				
03 Protective Occupation Under Social Security	<p>Includes only those employees whose principal duties (51% or more) meet all of the following requirements as defined in Wis. Stat. 40.02 (48) (a):</p> <ol style="list-style-type: none"> 1. Involvement in active law enforcement or active fire suppression or prevention, 2. Frequent exposure to a high degree of danger or peril, 3. A high degree of physical conditioning. <p>Wis. Stat. § 40.02 (48) (am) enumerates specific occupations typically qualifying for protective occupation participation. However, the occupations listing does not automatically confer protective occupation participant status upon the employee. The employee must also meet the definition of "protective occupation participant" in § 40.02 (48) (a), Wis. Stat. The specifically enumerated occupations are:</p> <table border="0"> <tr> <td>♦ Police Officer</td><td>♦ Firefighter</td></tr> <tr> <td>♦ Conservation Warden</td><td>♦ Conservation Patrol Boat Captain</td></tr> <tr> <td>♦ Conservation Patrol Boat Engineer</td><td>♦ Conservation Pilot</td></tr> <tr> <td>♦ Conservation Patrol Officer</td><td>♦ Forest Fire Control Assistant</td></tr> <tr> <td>♦ Member of the State Traffic Patrol</td><td>♦ State Motor Vehicle Inspector</td></tr> <tr> <td>♦ Sheriff/UnderSheriff</td><td>♦ County Traffic Police Officer</td></tr> <tr> <td>♦ Deputy Sheriff</td><td>♦ State Probation /Parole Officer</td></tr> <tr> <td>♦ State Correctional/Psychiatric Officer</td><td>♦ State Forest Ranger</td></tr> <tr> <td>♦ Fire Watcher Employed at Wisconsin veteran facilities</td><td>♦ Excise Tax Investigator</td></tr> <tr> <td></td><td>♦ Deputy Fire Marshall</td></tr> </table> <p>Per Wis. Stat. 40.22 (48) (bm), an employer may determine an Emergency Medical Technician (EMT) is a protective occupation participant, and the employer may do so without determining that the principal duties of the EMT involve active law enforcement or active fire suppression</p>	♦ Police Officer	♦ Firefighter	♦ Conservation Warden	♦ Conservation Patrol Boat Captain	♦ Conservation Patrol Boat Engineer	♦ Conservation Pilot	♦ Conservation Patrol Officer	♦ Forest Fire Control Assistant	♦ Member of the State Traffic Patrol	♦ State Motor Vehicle Inspector	♦ Sheriff/UnderSheriff	♦ County Traffic Police Officer	♦ Deputy Sheriff	♦ State Probation /Parole Officer	♦ State Correctional/Psychiatric Officer	♦ State Forest Ranger	♦ Fire Watcher Employed at Wisconsin veteran facilities	♦ Excise Tax Investigator		♦ Deputy Fire Marshall
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04 Protective Occupation NOT Under Social Security (new hires after April 1, 1986 have Medicare coverage)	<p>Firefighters who meet protective requirements are the only employees who qualify under this category. NOTE: If an employer acted to provide Social Security coverage before the beginning date of the employer's participation in WRS, firefighters have Social Security coverage and come under Code 03.</p>																				
05 Supreme Court Justice	<p>Note that reserve judges are treated as General Employees (Code 00).</p>																				
06 Legislative or State Constitutional Officers																					
07 Appellate Judge																					
08 Circuit Court Judge																					
09 Local Elected Official or Person Appointed to Fill an Elected Position	<p>This group includes local officials who are elected to office by vote of the people or persons appointed to fill an unexpired elected office term. Elected sheriffs are classified as Protective Occupation Under Social Security (Code 03).</p>																				
10 Teacher	<p>Includes any employee engaged in the exercise of any educational function for compensation in the public schools or the University in instructing or controlling pupils or students, or in administering, directing, organizing or supervising any educational activity, but does not include any employee determined to be an auxiliary instructional employee (Wis. Stat. § 40.02(55)).</p> <p>Teacher includes: librarians, employee of a full-time social center or community house, adult education or recreation director, instructor, or other employee employed by the Board of School directors of the City of Milwaukee who possesses the qualifications required for employment as a teacher. A teacher's aide is not included in this definition of teacher.</p>																				

Employment Code/Title		Description
11	State Teacher Executive Plan (State Agencies Only)	This category applies only to state employees serving in positions specified in Wis. Stat. § 20.923 (4), (8), or (9) who meet the definition of “teacher”.
12	Educational Support Personnel	Effective 07/01/1997, this category applies to non-teaching employees of school districts. Effective 07/01/1998, this category also applies to non-teaching employees of Wisconsin, Technical Colleges or Cooperative Education Service Agencies. (This does not include employees of the University.)

308 Examples of Employment in Multiple Categories

- A. If an employee meets the eligibility requirements under Wis. Stat. § 40.22 in **more than one employment category** for the same employer, the earnings and service are to be reported separately for each category of employment (Wis. Admin. Code § ETF 10.03 (4) (a)).

EXAMPLE 1: An employee is a half-time (660 hours) teacher, category 10, and also has a half-time (952 hours) secretarial job, category 12, with the same employer. This employee should be reported in both categories 10 and 12 for the respective earnings and hours.

EXAMPLE 2: An employee is a part-time (625 hours) police officer, category 03, and also works as a part-time (625 hours) dispatcher, category 00, with the same employer. This employee should be reported in both category 03 and category 00 for the respective earnings and hours.

- B. If employment in **only one category** meets the eligibility requirements of Wis. Stat. § 40.22, and all other employment with the employer does not, the earnings and service are to be reported under the one category which meets the eligibility criteria (Wis. Admin. Code § ETF 10.03 (4) (b)).

EXAMPLE 1: An employee is a half-time (660 hours) teacher, category 10, and also is a one-fourth time (476 hours) teacher’s aide, category 12, with the same employer. This employee’s total earnings and hours for both positions should be reported in the teacher category (10) because the employee does not meet the criteria to qualify separately in the educational support personnel category (12).

EXAMPLE 2: An employee works part-time (650 hours) as a dispatcher, category 00, and works part-time (400 hours) as a police officer, category 03, for the same employer. The employee’s total earnings and hours should be reported in the general category (00) because the employee does not meet the criteria to qualify separately in protective category (03).

- C. If employment in **more than one category** meets the eligibility requirements of Wis. Stat. § 40.22, **and all other employment** with the employer does not, then earnings and service for employment in those categories that do not meet the eligibility requirements of Wis. Stat. § 40.22 shall be added to and reported under:

- the employment category in which the greatest number of hours is worked

OR

- the priority employment category as listed in **Table 3.3**, if the greatest number of hours worked is equal in two or more qualifying categories (Wis. Admin. Code § ETF 10.03 (4) (c)).

Table 3.3 – Employment Category Priority

Priority	Category	Category Number(s)
1	Protective without Social Security Coverage	04
2	Protective with Social Security Coverage	03
3	State Executive Retirement Plan, Elected Official including Judges	02, 05, 06, 07, 08, 09, 11
4	Teacher	10
5	Educational Support Personnel	12
6	General and Court Reporters	00 and 02

EXAMPLE: An employee is a part-time (350 hours) firefighter, category 04; a half-time (950) city parks director, category 00; and a part-time (650 hours) elected official, category 09, for the same employer. The employee meets the eligibility criteria separately in both the elected official and general categories so the respective hours and earnings are reported separately.

However, the firefighter category does not separately meet eligibility criteria, hence the firefighter hours and earnings must be added to the qualifying category with the greatest number of hours. In this case, the general category has the greatest number of hours worked. Therefore, the hours and earnings associated with the firefighter category are combined with the hours and earnings reported in the general category.

This employee would have 1,300 hours (350 firefighter and 950 general) reported in the general (00) category and 650 hours reported in the elected official (09) category.

NOTE:	In the case above, if the employee works 800 hours in the general (00) category and 800 in the elected official (09) category, the hours and earnings associated with the firefighter category would be reported in the elected official (09) category because: the number of hours in the separately qualifying categories is equal; and the elected official (09) category has a higher priority than the general (00) category on the category priority listing.
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- D. If employment in **none of the categories** meets the requirements of Wis. Stat. § 40.22 separately, but those requirements are met when the employment is added together, then earnings and service should be added to and reported under (a) the employment category in which the greatest number of hours is worked, or (b) by the priority listing as shown above if the greatest number of hours is equal in two or more categories. (Wis. Admin. Code § ETF 10.03 (4) (d)).

EXAMPLE 1: An employee is a less than one-third time local elected official, category 09; a firefighter, category 04 which requires less than 600 hours per year; and a grounds keeper, category 00, which requires less than 600 hours per year. The employee actually worked the following: 320 hours as a local elected official, 440 hours as a firefighter, and 440 hours as a grounds keeper. Since the firefighter (protective without Social Security, category 04) and the grounds keeping job (general category 00) had the same number of hours, all hours and earnings must be reported under the protective category 04 because: none of the categories meet eligibility criteria separately, and the protective (04) category is the higher priority of the two categories (as shown in the priority listing) with 440 hours.

EXAMPLE 2: An employee is hired by a school district as a part-time instructor and part-time secretary. The employee is not eligible for WRS on the date of hire. On the one-year anniversary date, the individual has worked 200 hours as a teacher and 240 hours as non-teaching support staff. Note: The greatest number of hours worked is non-teaching. Even though this school district covers non-teachers under WRS, and WRS eligibility is determined by combining hours for both employment categories, the employee is not eligible for WRS. This is because the total number of hours worked ($200 + 240 = 440$ hours) is less than the 600 hours necessary to be reported as employment category 12, Educational Support Personnel.

EXAMPLE 3: An employee is hired by a school district as a part-time instructor and part-time secretary. The employee is not eligible for WRS on the date of hire. On the one-year anniversary date, the individual has worked 240 hours as a teacher and 200 hours as non-teaching support staff. NOTE: The greatest number of hours worked is teaching. This school district covers non-teachers under WRS, therefore WRS eligibility is determined by combining hours for both employment categories. The employee is eligible for WRS using combined hours for both employment categories because the total number of hours worked ($240 + 200 = 440$ hours) is equal to the 440 hours necessary to be reported as employment category 10, Teacher.

- E. If employment in none of the categories meets the requirements of Wis. Stat § 40.22 separately, and the employer does not cover its non-teachers under WRS, then the employer cannot combine employment categories (teaching and non-teaching) to determine WRS eligibility.

EXAMPLE: An employee works 420 hours as a teacher and 200 hours in a non-teaching position. The school district does not cover non-teachers under WRS. Therefore, only teaching hours are used in determining WRS eligibility. The employee must work one-third of full-time (440 hours) as a teacher to be eligible for WRS, therefore this employee is WRS ineligible.

309 WRS Eligibility and/or Employment Category Appeals

- A. An employee may appeal the employer's determination of eligibility and/or employment category as outlined below:
1. **WRS Eligibility (Participation) Appeals.** An employee may challenge their employer's determination that they are not eligible for WRS, or if covered by WRS, their WRS effective date. The employee must file a written appeal directly to the Board based on the following criteria:
 - a. **Employees hired on or after April 27, 1984** — Are subject to the seven-year statute of limitations in Wis. Stat. § 40.06 (1) (e) that became effective on April 27, 1984. These appeals may not apply to any service rendered more than seven years prior to the date the appeal is received by the Board.
 - b. **Employees hired before April 27, 1984** — Are not subject to the seven-year statute of limitations in Wis. Stat. § 40.06 (1) (e) because the statute was not in effect at the time of their hire.
 2. **Employment Category Appeals.** An employee may appeal an employment category determination made by their employer. The employee must file a written appeal directly to the Board based on the following criteria:
 - a. **Determinations made by the employer on or after January 1, 1982** — Are subject to the seven-year statute of limitations in Wis. Stat. § 40.06 (1) (e). Appeals regarding employment category may not apply to any service rendered more than seven years prior to the date the appeal is received by the Board.
 - b. **Determinations made by the employer prior to January 1, 1982** — Are not subject to the seven-year statute of limitations in Wis. Stat. § 40.06 (1) (e) because the statute was not in effect at the time the category determination was made.
- B. Appeal Process

An *Appeal Form* (ET-4938) is available on ETF's internet site or can be requested from the Department by calling the Employer Communication Center at (608) 264-7900. However, use of the form is optional. A letter from the employee providing the same information is also acceptable. Employee appeals must be submitted in writing to:

Appeals Coordinator
Department of Employee Trust Funds
P. O. Box 7931
Madison, WI 53707-7931

An employee who wishes to appeal an employer's determination of WRS eligibility, WRS effective date or employment category is required to present sufficient information at a hearing before a hearing examiner. An employee may request or subpoena documents and witnesses from the employer. Depending on the nature of the appeal, relevant information may include a log of hours worked during the dates in question, a position description with

percentage breakdowns of time spent on each task, or other information which the employer maintains.

Employers and employees may request applicable ETF records or information. Under normal circumstances the hearing examiner will prepare a proposed decision for the Board to consider before it issues its final decision. Board decisions are appealable to the Dane County Circuit Court.

310 Statute of Limitations for Corrections to Service, Earnings and Contributions that Impact WRS Disability and Retirement Benefit Payments

The Wisconsin Court of Appeals has held that the period of limitation under Wis. Stat. § 40.08 (10) within which errors may be corrected begins when the Department calculates a participant's benefits. Based on this ruling, the period of time for which an employer is accountable for payment to correct any potential errors is greatly expanded.

Correction of such an error can entail substantial cost to the employer since contributions and interest at the effective rate will be assessed on late reported earnings. Employers should exercise extreme caution to guarantee compliance with WRS requirements and take measures to audit their employees' accounts to ensure that errors do not go undetected for extended periods. Requests for correction must be received prior to the end of seven full calendar years beginning on the date the final annuity computation notice is issued **OR** on the date payment is issued for a lump sum.

Refer to Chapter 8 for corrections of service and earnings that have been reported for the current calendar year and to Chapter 10 for corrections for service and/or earnings reported for a prior year.

311 Maintaining Records Longer than Seven Years

Employers are advised to retain employee payroll and benefit records, since WRS eligibility and category determinations, as well as account adjustments, may not be time barred and employers may be liable for past service and earnings reporting regardless of when the error occurred. However, the employer must submit acceptable evidence for the Department to make a correction beyond seven years. If the employer no longer has records or refuses to submit records, the Department will consider acceptable evidence from the employee in making the determination to correct errors. Clerical errors made in reporting or recording contributions, service or earnings have no time limit.

Employers may also be asked to provide earnings for Qualified Domestic Relations Orders (QDRO) going back to 1982.